

ENVIRONMENTAL PROTECTION COMMISSION  
SPECIAL MEETING/PUBLIC HEARING  
**DRAFT MINUTES**  
September 13, 2006

Wednesday, September 13, 2006      7:30 p.m.      Auditorium  
Town Hall

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Chairman Hillman called the meeting to order at 7:30 P.M. Commission Members Present: Peter Hillman, Craig Flaherty, Ellen Kirby, Pete Kenyon and Reese Hutchison (Susan Cameron was recused).

Staff Present: Richard Jacobson

Court Reporter: Bonnie Syat

**Public hearing:**

Mr. Hillman opened the public hearing and read the hearing item at 7:35 p.m.

EPC-42-2006 Christopher and Margaret Stefanoni, 77 Nearwater Lane, proposing to construct an age restricted housing development and requesting a reconsideration of the extreme high water elevation and designation of the regulated inland wetlands.

Mr. Hillman thanked all parties for submitting materials in a timely manner. He read Mrs. Stefanoni's letter asking for clarification of Attorney Fuller's role in the application process. Mr. Hillman said that Mr. Fuller was retained by the Town's legal counsel, Curtis, Brinckerhoff and Barrett to represent the Town in this matter.

Mr. Hillman stated for the record that he has made an annual donation to the Darien Land Trust of \$250.00 for several years and this year's donation was made prior to this application. He said it will not interfere with his ability to be impartial on this application.

Mr. Hillman said Attorney Canavino has submitted a verified copy of a Notice for Intervention by Richard Breeden. He also said that Attorney O'Hanlan submitted a verified copy of a Notice for Intervention by Wilder Baker. He noted that Mssrs. Breeden and Baker have intervenor status in this application.

Mr. Hillman asked for comments from the public.

Mrs. Nara of 1 Juniper Road spoke and said the location of the project is unsuitable because Nearwater Lane is a narrow and busy street.

Mr. Hillman acknowledged a letter from Dr. Kenneth Orson and asked Dr. Orson if he wished to speak. Dr. Orson said his letter will suffice as his comments. Mr. Hillman acknowledged a letter received from Mr. Udi Saly of Nearwater Lane who was not able to attend the hearing.

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Georgia von Schmidt discussed her concerns for the considerable amount of water which runs across her property and across Nearwater Lane to the Stefanoni property. She submitted photos of her property and Nearwater Lane. She said that on August 20, 2006 the Nearwater Lane storm sewer exploded into her basement and flooded it. She submitted photos of the flood damage. She said she was told by the Department of Public Works that the storm sewer in front of the Stefanoni property is 12" not 18". She asked the Commission to consider whether this pipe is adequate and whether the discharge from the Stefanoni property will increase water to the pipe from the intensive use of the property.

Mrs. Stefanoni asked her to disclose the relationship to the firm she works for. Mrs. von Schmidt said she works for Curtis, Brinkerhoff & Barrett part time and is not an employee of the firm. Mrs. Stefanoni asked her if she had discussed the installation of a back-flow valve in the pipe in her basement. Mrs. von Schmidt said the contractor told her a valve could be installed but he had reservations because the valve could fail. Mrs. Stefanoni asked if the reservations he had involved the potential for materials from the roof gutters clogging the pipe if they are not cleaned. Mrs. von Schmidt said no. Mrs. Stefanoni said the contractor told her that.

Mrs. Stefanoni asked if she has ever seen water flowing off the Stefanoni property onto Nearwater Lane. Mrs. Schmidt answered no. Mr. Canavino asked for the name of the Town employee who told her the pipe was 12" in diameter. Mrs. Schmidt said his name was Anthony and provided his phone number. (Mr. Stefanoni provided the last name of Anthony Taccone).

Mr. Stefanoni said they have lived at 77 Nearwater Lane since 1999 and water from the road has never flowed onto their property.

Mr. Gleason asked Mrs. von Schmidt if she knew the elevation of her basement relative to the storm sewer. She said she believes the basement elevation is above the drain in Nearwater Lane.

Mr. Hillman said he met with Town Counsel after Mr. Schmidt joined Curtis, Brinkerhoff & Barrett. He said Mr. Schmidt is not a shareholder in the firm and he was assured that Mr. Schmidt has not, nor will he be involved in this application. He said he is satisfied that there is no ethical problem with Curtis, Brinkerhoff and Barrett representing the Town in this matter.

Mr. Wilder Baker of 99 Nearwater Lane said the preamble to the wetland regulations call on the Commission to protect the fragile resources of the Town. He asked about the process for the Commission reaching a decision and what degree of confidence they must have in a very sophisticated engineering system, and with only a 50-50 proposition that the system will work. He said the Commission should have a 100% degree of confidence in the system to approve it. Mr. Hillman said that not all of the evidence is in and the

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Commission will reserve judgment until then. He said he will explain at the end of the proceedings the Commission's process for making a decision.

Shirley Nichols, Executive Director of the Darien Land Trust submitted a letter which received the unanimous support of 22 members of their Board of Directors. She described the DLT properties and mission. She said that Holly Lane is an important resource. They have hired an Attorney and experts to testify. She said the proposal requires intensive use of the property and complex engineering. The project is inappropriate in its location and scale. It will cause irreparable harm to Holly Pond and should be denied.

Mr. Hillman said the Commission has received a report from Mr. MacBroom dated September 8, 2006. Mr. MacBroom is the expert retained by the Commission to determine whether a small patch of wetland is an inland wetland or a tidal wetland regulated by the DEP. In December of 2005 and January of 2006 Mr. MacBroom concluded that the patch of wetland is an inland wetland based on elevation. Mr. Hillman said the intervenors have raised the issue of collateral estoppel which has been referred to the Town Attorney.

Mr. MacBroom's report concluded that the Commission should use the elevation of "local extreme high tide" which is not the same as the "high tide line" Mr. MacBroom said the 1988 version of the U.S. Army Corp of Engineers publication is still effective. The one year frequency flood elevation is 5.8 NGVD, subject to a revision by the National Oceanic and Atmospheric Agency to 6.0 NGVD after adjusting for the rise in sea level.

Mr. Hillman asked the physical measurements of the tide made in December whereas the current report relies on published data. Mr. MacBroom said the three factor definition of tidal wetlands is still correct: areas which border or lie beneath tidal waters, whose surface is at or below an elevation of one foot above local extreme high water, and supporting or capable of supporting tidal wetland vegetation. He said that in 1997 the DEP clarified the definition that tidal wetlands are based on the tidal charts of the USACOE.

Mr. Flaherty asked if the Commission could surmise that they misinterpreted his report from December and January. Mr. MacBroom said the original report may not have clarified the differences in the definitions and he has since reviewed this "definition problem". Mr. Flaherty asked if, in Mr. MacBroom's experience, the differences in definition are "splitting hairs" or is a unique situation. Mr. MacBroom said this was a unique analysis and the difference in definitions is splitting hairs. Mr. Flaherty asked his analysis and review of the documents provided any significant information which was not available in January. Mr. MacBroom said the new information is not pertinent to the tidal wetland definition. Mr. Hutchison asked if the definition was fixed in 1997. Mr. MacBroom said yes.

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Mrs. Stefanoni asked Mr. MacBroom if the elevation of extreme high water is 5.8 or 6.0. Mr. MacBroom said the regulation says 5.8 but the NOAA elevation used in practice is 6.0. Mr. MacBroom said the actual level may be higher but not by regulation. Mrs. Stefanoni asked his opinion on the information submitted with the application and whether it was helpful. Mr. MacBroom said the reports reflected good engineering practice, however, the high tide line established is related to the DEP structures, dredging and fill program. Mrs. Stefanoni asked if his previous report referred to both. Mr. MacBroom said yes. Mrs. Stefanoni quoted page two of the previous report regarding the high tide line. Mr. MacBroom said the report refers to an approximation. Mr. Hutchison asked why the definition was clarified in 1997. Mr. MacBroom said it was to correct the problem of approximation and provide one definition.

Mr. Hillman asked Mr. Canas if he had received the September 2, 2006 report from Mr. Hammons and if he prepared to address the addendum. Mr. Canas said he has no major concerns. He said the response to the question of reverse flow was to propose a check valve. He said the addendum addressed previous comments from his report. Mr. Hillman asked him if the valve will hold in a storm greater than a 2 or 5 year event. Mr. Canas said yes. As the capacity of the pipe in the catch basin is exceeded, the water will flow down Nearwater Lane and the valve will prevent backflow. Mr. Hillman asked him if any of Mrs. Von Schmidt's testimony changed his opinion. Mr. Canas said no. Mr. Hillman asked if the off-site area described by Mr. Risoli was included in the hydrograph. Mr. Canas said the applicant still needed to address that. Mr. Hillman asked if the other items, 1.A, 1.D. and 1E. in his report were addressed. Mr. Canas said they were addressed and can be added as notes on the final plans as a condition. Mr. Hillman asked if the question of carrying capacity was addressed. Mr. Canas said that question still needed to be answered.

Mr. Hillman asked Mr. Ryder to comment on his report. He said paragraph one deferred to Mr. Canas on the engineering question and asked if the issue of an environmental impact from the backflow has been addresses. Mr. Ryder the issue has been addressed and there is no longer an environmental concern. Mr. Hillman asked him if there was a disagreement with Mr. Sachs about the tree plantings in the detention basin. Mr. Ryder said they do not recommend large trees on the slopes of detention basins. He said the DEP concern is that wind thrown trees will disturb the banks of the basin. He requested that no large trees be planted on the berm slope or top of the berm.

Mr. Hillman asked Mr. Hammons to respond to the intervenors and public comments.

Mr. Hammons said that, in response to the question about the off-site watershed area, it is included in the hydrographs and is shown in the appendix of his report. He said he wished to address the comments about the complexity of the drainage system. He said the word complex is not accurate and that he would describe the system as redundant. With respect to the level of confidence the Commission could have in the system, the DEP Manual and federal stormwater regulations address this. He said the Best Management Practices they are providing meet or exceed these requirements. Mr. Hammons asked the

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Commission to keep in perspective that they are treating one acre with a redundant system in a 38 acre watershed of untreated water.

Mr. Hammons said the pipe in the Nearwater Lane catch basin is an 18" pipe. He said there is a 12" PVC pipe in a manhole which intercepts the storm drain and drains the Von Schmidt property. He said the 18" pipe can only handle a 2 year storm and then Nearwater Lane becomes an open channel. Mr. Hillman asked him if he wished to comment on Mrs. Von Schmidt's photos and possible adverse impacts to her property. Mr. Hammons said he had no comment. Mr. Hillman asked him if the carrying capacity of the swale still adequate for the runoff. Mr. Hammons said yes. Mr. Canas said that would be an easy calculation which can be verified. Mr. Flaherty asked how much water leaves 77 Nearwater under the existing conditions. Mr. Hammons said virtually none.

Mr. Risoli spoke regarding the previous testimony about the need for a valve. He said the water pressure without the catch basin would rise to a height of 77 feet. He described the valve device and provided exhibits including drainage system profiles and hydrographs. He said there is a deficit of storage capacity on the site of 4527 cubic feet. Mr. Hutchison asked if he assumed there would be any infiltration. Mr. Risoli said no. Mr. Gleason said the calculations were bases on a 25 year storm. He asked Mr. Risoli what the storage deficit would be for a 50 year event. Mr. Risoli said it would be more, but not double. He can provide numbers. Mr. Hillman asked him to prepare a written report.

Mr. Gleason referenced page 32 section I.1. of the zoning regulations require zero increase for a 50 year storm. Mr. Hillman asked him if an affordable housing project must comply to that standard. Mr. Gleason said they are two different things, however, the Commission should apply that as a minimum standard.

Mr. Aurelia spoke on behalf of the intervenor's. Mr. Hillman said his testimony from the previous hearings regarding the value of the wetlands and Holly Pond would be incorporated into the record.

Mr. Aurelia said the DEP List of Impaired Waters includes most of the waters of Connecticut. This does not reduce the value of these wetlands and watercourses. He said that feasible and prudent alternatives must be addressed if there are deficiencies in the plan. He said an alternative is to reduce the site coverage to expand the stormwater system. He said that bonds for the long term are possible.

Mrs. Stefanoni introduced Mr. August Papajohn, General Contractor. Mr. Papajohn said he has experience in multifamily and commercial construction. Mr. Hillman asked him if he would consider bidding on the job of building The Noroton. Mr. Papajohn said yes. Mr. Hillman asked him about previous projects he had worked on. He asked Mr. Papajohn if he agreed with Mr. Epifano that the extensive safeguards and erosion controls cannot be maintained. Mr. Papajohn said he was confident they could maintain the controls. Mr. Hillman asked if he had any specific recommendations if the project were to be approved. Mr. Papajohn said that every aspect of the project management should be

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detailed. Mr. Papajohn said he reviewed the site plans and visited the site and was confident they could construct the plan in compliance.

Mr. Hillman asked Mr. Risoli about a date for providing a written report. (The Commission took a brief recess for Mr. Risoli to consult with his clients.)

Mr. Risoli was asked to submit a written report by to Mr. Hammons and the staff by Wednesday September 20.

Mr. Canas will follow up on an appropriate standard for drainage design for the project. Mr. Flaherty said the Town has not formally adopted the drainage manual.

Responses to the reports were requested by Tuesday September 26 at 3:00 p.m.

Mr. Hillman stated that the meeting will be continued until Wednesday September 27 at 7:30 p.m.

The meeting adjourned at 11:10 p.m.

Respectfully submitted,

Richard B. Jacobson  
Environmental Protection Officer